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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/582,825 08/17/00 CARRION

D 05725.0346-1

EXAMINER

HM12/0928

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HOWARD, S

ART UNIT

PAPER NUMBER

1615

DATE MAILED:

09/28/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trad marks

Office Action Summary

Application No.
09/582,825

Applicant(s)
Carrion et al.

Examiner
Sharon Howard

Art Unit
1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 24, 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 5 20) ☐ Other: _____

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Receipt of IDS filed on 1/24/2001 is acknowledged.

Claims 1-24 are pending in this application.

DETAILED ACTION

This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Claim Rejections - 35 USC § 112

1. Claims 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, the language “chosen from ceramic microspheres, glass microspheres, polymeric microspheres, and metal microspheres is indefinite, because it is improper Markush language. Proper Markush language is “selected from the group consisting of ceramic microspheres, glass microspheres, polymeric microspheres, and metal microspheres”.

In claim 8, the language “chosen from cellulose acetate, cellulose acetate butyrate, ethyl cellulose, vinyl polymers, nitrocellulose, nitrocellulose derivatives, acrylics, and urethanes” is improper Markush grouping, should be “selected from the group consisting of cellulose acetate, cellulose acetate butyrate, ethyl cellulose, vinyl polymers, nitrocellulose, nitrocellulose derivatives, acrylics, and urethanes”.

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Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pappas et al. (U.S. Patent No. 5,093,108) in view of Kallenbach (U.S. Patent No. 5,212,214).

Pappas discloses a quick-drying nail enamel compositions and method for coating a surface (see abstract). Pappas teaches that the compositions comprises a primary film-forming polymer consisting of nitrocellulose, cellulose acetate, cellulose acetate butyrate, ethyl cellulose, vinyl polymers, acrylate type polymers and a secondary, additional film-forming polymer comprising alkyd resins and acrylic and methacrylic resins, (col.9, lines 13-68) which are known for providing an adhesion and an effective gloss, a plasticizer (col.10, lines 1-33), a thixotropic agent and pigments (col.12, lines 65-68). Pappas teaches that the compositions may be used as base coats or top coats for application to the nails (col.9, lines 6-8) and that the compositions are known in the cosmetic art to dry to a hard coating, as well as exhibiting high gloss and durability properties.

Pappas does not teach microspheres.

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However, Kallenbach discloses a coating composition which is known in the art for enhancing hardness, abrasion-resistance and durability. Kallenbach teaches that the coating composition can be applied to a substrate in order to improve the degradation resistance of the substrate (see abstract). The composition comprises ceramic microsphere, made of hollow, spherically-shaped ceramic particles (col.7, lines 63-68 and col.8, lines 1-8). Kallenbach teaches EXTENDOSPHERES and ZEEOSPHERES (Col.8, lines 13-36) and the particle size distribution and the diameter of the microspheres are encompassed therein. Kallenbach teaches that the ceramic microsphere filler should have a particle size of less than 325 mesh (col.8, lines 2 and 3).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the coating composition comprising microspheres taught by Kallenbach in nail enamel composition taught by Pappas, with the expectation of achieving the same beneficial results. One would expect to obtain a coating composition which exhibit the physical properties of enhanced durability, high gloss and abrasion-resistance.

Conclusion

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Sharon Howard whose telephone number is (703) 308-4359. The examiner can normally be reached on Monday-Friday from 9:00am to 5:00pm.

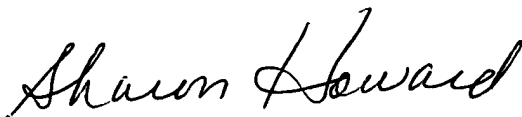
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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page, can be reached on (703) 308-2927. The fax phone number for this Group is (703) 746-3121.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [**thurman.page@uspto.gov**].


All internet e-mail communications will be made of record in the application file. PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.



Sharon Howard

September 27, 2001



THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600